

Calendar No. 1118

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-1107

VINCENZO PELLICANO

AUGUST 12 (legislative day, AUGUST 11), 1970.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 13712]

The Committee on the Judiciary, to which was referred the bill (H.R. 13712) for the relief of Vincenzo Pellicano, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of a crime involving moral turpitude in behalf of the son of citizens of the United States.

STATEMENT OF FACTS

The beneficiary of the bill is a 37-year-old native and citizen of Italy, who resides in that country with his wife and three children. His mother and father are citizens of the United States as are four of his brothers and sisters. In addition, three brothers and sisters are lawful residents of the United States. The beneficiary enjoys a fourth preference priority date of June 5, 1963, but he has been denied a visa because of his conviction in 1954 of attempted aggravated theft. The record discloses that the beneficiary, while intoxicated, attempted to break into the grocery store of his relative to obtain cream cheese. He received a 4-month suspended sentence and was fined. Without the waiver provided for in the bill, the beneficiary will be unable to join his family in the United States.

A letter, with attached memorandum, dated November 5, 1969, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., November 5, 1969.

A18-723-090.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 13712) for the relief of Vincenzo Pellicano, there is attached a memorandum of information concerning the beneficiary.

The bill would waive the provision of the Immigration and Nationality Act which excludes from admission into the United States aliens who have been convicted of a crime involving moral turpitude, or aliens who admit having committed such a crime, or acts which constitute the essential elements of such a crime, and would authorize the beneficiary's admission for permanent residence, if he is otherwise admissible under the act. The bill limits the exemption granted the beneficiary to a ground for exclusion known to the Department of State or the Department of Justice prior to the enactment of the bill.

Sincerely,

RAYMOND F. FARRELL,
Commissioner.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND
NATURALIZATION SERVICE FILES RE H.R. 13712

Information concerning this case was obtained from Mrs. Mariangela Pellicano, the beneficiary's mother.

The beneficiary, Vincenzo Pellicano, a native and citizen of Italy, was born on October 23, 1932. He is married and resides in Italy with his wife and three children, aged 16, 12 and 3 years.

Mr. Pellicano is a farmer and has a fifth grade education. He works the family farm from which he derives a meager living. This is supplemented by his parents who send him \$100 monthly. He has no assets.

The beneficiary's application for an immigrant visa was denied by the U.S. Consulate in Palermo, Italy because of a conviction in May 1954 for breaking, entry and theft. The committee may desire to request the Bureau of Security and Consular Affairs, Department of State, to secure complete information in this regard.

Mrs. Mariangela Pellicano was born in Italy on May 1, 1916. Her husband Dominic was born in Italy on July 4, 1913. They were married in their native country on September 22, 1932. Mr. Pellicano entered the United States on July 10, 1956 and was naturalized a citizen of the United States on May 2, 1963. Mrs. Pellicano entered on May 5, 1958 and was naturalized on November 7, 1963. They have seven other children besides the beneficiary who have been admitted to the United States for permanent residence. Four are citizens of the United States. Only one is dependent on them for support.

Mrs. Pellicano is presently employed as a packer at a weekly wage of \$65. Mr. Pellicano receives a weekly wage of \$105. Their assets consist of a \$2,000 savings account, a home valued at \$10,000 and furniture valued at \$8,000. In Italy they have 100 acres of farm land and three houses on which they place a valuation of \$25,000.

The Department of State submitted the following report on the case dated December 15, 1969, to the chairman of the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, D.C., December 15, 1969.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In reference to your request for a report concerning the case of Vincenzo Pellicano, beneficiary of H.R. 13712, 91st Congress, there is enclosed a memorandum of information concerning the beneficiary. This memorandum has been submitted by the American Consulate General at Naples, Italy, in whose consular jurisdiction the beneficiary resides.

The bill would provide for the issuance of a visa and the beneficiary's admission into the United States for permanent residence notwithstanding his ineligibility as an alien who has been convicted of a crime involving moral turpitude, provided he is otherwise admissible. The relief granted is limited to a ground for exclusion known to the Department of State or the Department of Justice prior to enactment.

Sincerely yours,

H. G. TORBERT, Jr.,
Acting Assistant Secretary for Congressional Relations.

[Submitted by the American Consulate General, at Naples, Italy]

MEMORANDUM OF INFORMATION CONCERNING H.R. 13712, 91ST
CONGRESS, FOR THE RELIEF OF VINCENZO PELLICANO

The beneficiary was born on October 23, 1932, at Gallina, Reggio Calabria, Italy. He married Lavinia Faldute on February 18, 1952, and they reside at Rosario Valanide, Reggio Calabria, with their three children, Maria Angela, born on November 1, 1952, Domenico, born on April 14, 1957, and Paolo, born on August 6, 1966. The beneficiary's parents and seven other siblings reside in the United States.

The beneficiary finished the fifth grade of elementary school. He served in the Italian Army from 1940 to 1945. From 1946 until 1948 he worked as an apprentice mason. He owns his own home and states he works as a mason when he can find work. Otherwise he works on property of his parents which consists of land and olive trees.

On December 9, 1965, the Consulate General at Palermo found the beneficiary ineligible to receive a visa under section 212(a)(9) of the Immigration and Nationality Act because of his conviction in 1954 of attempted aggravated theft. There are enclosed two copies of translations of the court records.

On June 5, 1963, a fourth preference petition was filed in favor of the beneficiary by his father, Domenico Pellicano. The petition was approved by the Buffalo office of the Immigration and Naturalization Service on August 6, 1963.

The beneficiary was medically examined on October 31, 1969 and no condition was revealed that would make him medically ineligible to receive a visa. A current background investigation concerning the beneficiary has been initiated. The committee will be informed should any further derogatory information be revealed.

GALLINA MAGISTRATES COURT

In the name of the Italian people, the magistrate of Gallina, Dr. Mario Mancini, has passed the following sentence in the penal law suit against Pellicano Vincenzo, son of Pellicano Domenico and Paviglianiti Mario, born at Gallina in the province of Reggio Cal. on October 22, 1932, and residing in Rosario Valanidi, in the same province, Contrada Martello.

Charged of the crime, according to article 624-625 n. 2 Penal Code, of intending to make a profit of goods he had gained possession of, in prejudice of Falduto Antonino, whose grocery shop he had broken into with violence.

Rosario Valanidi 7454.

At 11:15 p.m. on April 7, 1954, Falduto Antonino, returning to his home, situated in Rosario Valanidi, heard suspicious noises in the shop below, which sells groceries, run by himself, and having entered with all due caution suddenly saw a certain Pellicano Vincenzo go out of the shop, and run away. It was however possible for Falduto to catch Pellicano, because both having raised their voices as is usual in similar circumstances many people of the neighbourhood gathered to see what was happening.

As Falduto and Pellicano were present, the said episode was covered up and so the sum of 30,000 lire was given to the robbery victim as compensation. But this did not satisfy him and denounced the above-mentioned facts.

The knowledge of the matter was transmitted to this court for the jurisdiction of the district attorney, to whom legal proceedings were sent, being able to assume robbery made worse with violence (breakage of the lock). The accused was adjourned to today's audience in which the offended party instituted a civil action law.

The defence of the accused, as a result of the flagrancy of the crime undoubtedly confirmed by the result of the trial, tries to limit the penal consequences sustaining that the accused overcome by the wine which he had previously drunk abundantly, attempted to tamper with the lock in order to go into the shop of his relative Falduto certainly to take certain undoubtedly appetizing cream-cheeses which he had previously mentioned to his card playing friends in the wine cellar. The judge comments that the case in point given as admitted by the defence integrating already on its own the

hypotheses of attempted robbery, because he who forces a lock from the outside, of a public building to remove the goods inside, is obviously responsible for attempted aggravated robbery, even though it is clear that he does not succeed in gaining possession of the object. Thus there are in this lawsuit certain fixed points which cannot be contested; the breakage of the lock, which integrated the above-mentioned violence against objects, and indicates the unmistakable intention of the accused to appropriate some object in the shop.

The surprising of Pellicano in the act in which going out of the shop he tried to get away, without however succeeding because he was immediately caught by Falduto Antonino.

So these circumstances indicate clearly that the accused had entered, by means of forcing the lock in Falduto's shop with the unmistakable intention of robbing.

Did, however, Pellicano have enough time to appropriate objects (goods and money) belonging to Falduto?

This aspect of the episode is doubtful. The behaviour of the offended party has not allowed light to be thrown on this point.

In fact Falduto has never indicated with sober clarity what he was robbed of, nor can the reason for his attitude be understood.

It remains doubtful in fact if he behaved in such a way because nothing was actually taken from him, and with the legal proceedings he has attempted to speculate over the undoubtedly criminal episode of Pellicano, or whether the lack of clarity over this point depended on the fact that at first Falduto had decided to cover up the misdeed of Pellicano, thus he did not think of supplying sufficient elements to the recorders about the substance of the theft.

In these circumstances, the judge however retains that as it is not possible for him to establish what the theft consisted of, and that is to say, whether in money or in goods, though his latter point seems unlikely because the accused, being surprised by Falduto, could not at all easily have removed any goods; the accused therefore must be considered guilty of attempted aggravated robbery and not of robbery actually committed. A suitable penalty is considered to be 4 months' imprisonment and 4,000 lire fine, and the payment of damages to the offended party to be settled in a special session; the lawyer's fees and legal expenses according to the regulations. Following the conditions of the law, the penalty can be suspended under the caution of law and on condition that the payment of the lawyers' fees and expenses of the constitution of civil penalty are carried out within 40 days from today.

Sentence given the acts 483-488 Penal Procedure Code 56-624-625 N.2 Penal Code the court declares Pellicano Vincenzo guilty of attempted aggravated theft the epigraph thus reduced, and the conviction to the penalty of 4 months of imprisonment, 4 thousand lire fine, and the expenses, as

well as the payment of damages to the offended party to be paid in a special session and expenses and fees towards the guilty party to the sum of £12,850 lire.

The judge orders the penalty to be suspended under the caution of law and on condition that the payment of expenses and fees towards the offended party be carried out within 40 days from today.

Gallina 31.5.54

Signatures of the magistrate, registrar of court, I certify that this is an authentic translation.

J. C. LEWIS.

Congressman Henry P. Smith III, the author of the bill, submitted the following letter and memorandum in support of the bill to the House Immigration and Nationality Subcommittee:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 2, 1970.

HON. MICHAEL A. FEIGHAN,
*Chairman, Subcommittee on Immigration and Nationality,
House Committee on the Judiciary,
Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for the prompt action taken by your subcommittee on May 21 on my bill, H.R. 13712, for the relief of Vincenzo Pellicano.

Enclosed is a lengthy memorandum in this regard which I forward for your record on H.R. 13712. I have looked into Mr. Pellicano's background carefully and I feel sure that his youthful indiscretion was just that and that he and his family will be useful citizens of the United States one day, should they gain admission to this country.

Thank you again for scheduling the bill for consideration and for the favorable action taken by your subcommittee.

With all good wishes,

Sincerely yours,

HENRY P. SMITH III,
Member of Congress.

VINCENZO PELLICANO

1. Vincenzo Pellicano was born on October 23, 1932, in Gallina, Reggio Calabria, Italy.

2. Vincenzo Pellicano was married to Lavina Saldugo in Reggio Calabria on February 18, 1952, who was born on February 5, 1934, in Motta San Giovanni, Reggio Calabria, Italy.

3. Vincenzo and Lavina Pellicano have three children, to wit: Maria Angela Pellicano, born November 1, 1952, in Ravagnese, Reggio Calabria, Italy, Domenico Pellicano born April 14, 1957, in Ravagnese, Reggio Calabria, Italy, and Paolo Pellicano, born August 6, 1966, in Ravagnese Reggio Calabria, Italy.

4. Vincenzo and Lavina Pellicano, together with their three children reside at Rosario Valanide, Martellio, Reggio, Calabria, Italy.

ADDITIONAL INFORMATION

Vincenzo Pellicano has the following immediate relatives residing in the United States at Lockport, N.Y.:

Father and Mother, Domenic and Mary Angela Pellicano, both of whom are U.S. citizens.

Grandmother, Mary Ann Pagliniti, who is 83 years old and is a legal resident of the United States.

Brother, Frank, and sisters Antoinette and Mary Ann, all of whom are citizens of the United States.

Brothers Anthony and Steven who are legal residents of the United States.

Vincenzo Pellicano is ineligible to receive an immigrant visa to the United States because of conviction in May, 1954, for attempted aggravated theft. Except for Mr. Pellicano's conviction of the aforesaid crime, he has never been in trouble with the police of any country and he has never been arrested or convicted for any other offense. With respect to the aforesaid conviction, Vincenzo Pellicano was given a suspended sentence, has been a model citizen, and the Department of State and the Consulate General at Palermo, Italy, has found that there exists no other grounds, including medical grounds that would make him ineligible to receive an immigrant visa.

With respect to his conviction, it appears that Vincenzo Pellicano, after the consumption of a large amount of alcohol, attempted to obtain cream cheese from the grocery store of a relative by the name of Antonio Falduto. He gained access to the grocery store by "tampering with the lock." He was discovered and made a settlement with Antonio Falduto in the amount of thirty-seven thousand lire or approximately \$50. Nevertheless, Mr. Falduto denounced Vincenzo Pellicano and he was arrested, convicted and sentenced to 4 months imprisonment and 4 thousand lire fine which was suspended.

Since his conviction Vincenzo Pellicano has been a model citizen and has led an exemplary life with his wife and three children. As reflected by his sentence, the crime for which he was convicted was not considered serious. Nevertheless without the relief of a private bill, Vincenzo Pellicano will be forever barred from residing in the United States and from being reunited with his mother, father, grandmother, sisters, and brothers who are citizens and legal residents of the United States. Additionally, Vincenzo Pellicano is not now, nor has he ever been, a member of the Communist Party or any other subversive organization.

It is submitted that Vincenzo Pellicano has rehabilitated himself and has become a model member of the community. It is his, and the desire of his family in the United States,

that they be reunited with him and his wife and their children. In light of the foregoing, and the Department of State and the Department of Justice having no objection to Vincenzo Pellicano being granted the desired relief, it is respectfully requested that favorable consideration be given to the private bill on behalf of Vincenzo Pellicano.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H.R. 13712) should be enacted.

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